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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,376	11/30/2000	Yutaka Kobayashi	200197US0XPC	1263
22850	7590	04/23/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			SHOSHO, CALLIE E	
			ART UNIT	PAPER NUMBER
			1714	

DATE MAILED: 04/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/701,376

Applicant(s)

KOBAYASHI ET AL.

Examiner

Callie E. Shosho

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 03 December 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☒ Applicant's reply has overcome the following rejection(s): see attachment.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-15

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

Callie E. Shosho  
Primary Examiner  
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**Attachment to Advisory Action**

1. Applicants' arguments filed 4/5/04 and executed 1.132 declaration filed 4/7/04 have been fully considered.

Applicants' arguments overcome the 35 USC 112, 1<sup>st</sup> paragraph rejection of record. Further, the amendment overcomes the rejections of record utilizing EP 699711 as set forth in paragraphs 5-6 of the office action mailed 7/3/03. Additionally, given applicants' filing of certified foreign priority document on 11/30/00 and its English translation on 4/5/04, applicants have perfected the foreign filing date and thus, Sumitomo et al. (U.S. 6,201,090), whose filing date lies between the filing date and foreign priority date of the present invention, is no longer applicable against the present claims.

However, applicants' arguments and 1.132 declaration are not successful in overcoming the rejections of record utilizing Watanabe et al. '099 (U.S. 5,684,099) as set forth in paragraph 7 of the office action mailed 7/3/03.

Watanabe et al. disclose nucleating agent including methylene bis(2,4-di-t-butylphenol) acid sodium phosphate as presently claimed, however, methylene bis(2,4-di-t-butylphenol) acid sodium phosphate is but one of several nucleating agents disclosed by Watanabe et al. '099 with no disclosure or suggestion to select out methylene bis(2,4-di-t-butylphenol) acid sodium phosphate as more favorable than the other nucleating agents.

In order to establish the criticality of the presently claimed nucleating agent and thus, overcome the rejections of record utilizing Watanabe et al. '099, applicants have filed a 1.132 declaration on 4/7/04 which compares compositions within the scope of the present claims, i.e. comprising nucleating agent which is methylene bis(2,4-di-t-butylphenol) acid sodium phosphate

(examples 1-5 of the present specification), with compositions outside the scope of the present claims, i.e. comprising no nucleating agent or nucleating agent which is aluminum p-t-butylbenzoate, but within the scope of Watanabe et al. '099 (examples 1-14 of Watanabe et al. '099). It is shown that the present invention is superior in terms of Izod impact strength at  $-20^{\circ}\text{C}$ .

However, it is the examiner's position that the declaration does not establish unexpected or surprising results over the cited prior art given that there does not appear to be proper side-by-side comparison between the compositions of the present invention and those of Watanabe et al. '099.

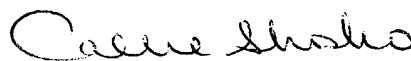
Specifically, all the propylene-ethylene block copolymers disclosed in the examples of Watanabe et al. '099, with the exception of block copolymer BPP 24 used in examples 11 and 24, possess melt flow rate outside the scope of the present claims. Further, examples 11 and 24, which do disclose propylene-ethylene block copolymer with melt flow rate within the scope of the present claims, utilize propylene-ethylene block copolymer that comprises ethylene-1-butene copolymer portion while all the examples of the present invention utilize propylene-ethylene block copolymers comprising ethylene-propylene copolymer. Additionally, none of the examples of Watanabe et al. appear to comprise xylene soluble in amount as presently claimed.

Thus, given the differences between the propylene-ethylene block copolymers utilized in the compositions of the present invention and those of Watanabe et al. '099, the declaration is not persuasive given that it is not clear if the differences in the Izod impact strength between the presently claimed compositions and those of Watanabe et al. are due to the differences between the block copolymers utilized or due to the differences between the nucleating agents utilized.

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Additionally it is noted that, as set forth above, Sumitomo et al. is no longer applicable against the present claims. Sumitomo et al. was used for its teaching of xylene soluble having single relaxation time and the relationship between relaxation time and ethylene content. However, alternatively, examiner also argued that given that Watanabe et al. '099 disclose composition comprising propylene-ethylene block copolymer with same content of xylene soluble as presently claimed, it would have been natural for one of ordinary skill in the art to infer that the xylene soluble of Watanabe et al. '099 intrinsically possesses single relaxation time component and relationship between relaxation time and ethylene content as presently claimed. Thus, although Sumitomo et al. is no longer applicable against the present claims, the rejections of record still meet the limitations of the present claims.

In light of the above, the rejection of record utilizing Watanabe et al. '099, as set forth in paragraph 7 of the office action mailed 7/3/03, remains applicable against the present claims.



Callie E. Shosho  
Primary Examiner  
Art Unit 1714

CS  
4/22/04